

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 29

HOUSE BILL 2158

AN ACT

AMENDING SECTIONS 44-3132, 44-3133, 44-3134, 44-3271 AND 44-3297, ARIZONA
REVISED STATUTES; RELATING TO INVESTMENT MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-3132, Arizona Revised Statutes, is amended to
3 read:

4 44-3132. Investigations

5 The commission, the director or any other agent or agents designated
6 by the commission may:

7 1. Make PRIVATE OR PUBLIC investigations within or outside this state
8 that the commission deems necessary to determine whether any person has
9 violated or is about to violate this chapter or any rule or order adopted or
10 issued under this chapter, to aid in the enforcement of this chapter or to
11 aid in adopting rules and forms under this chapter.

12 2. At any time either before or after the licensure of any investment
13 adviser or investment adviser representative, investigate and examine the
14 affairs of any person engaged in the provision of investment advisory
15 services or the affairs of any person if the commission believes that the
16 person is or may be engaged in the provision of investment advisory services.

17 Sec. 2. Section 44-3133, Arizona Revised Statutes, is amended to read:

18 44-3133. Power to require testimony and production of records;
19 order of nondisclosure; applicability

20 A. For the purpose of investigations or hearings that, in the opinion
21 of the commission, are necessary and proper for the enforcement of this
22 chapter, any member of the commission, the director or any officer or
23 officers designated by the commission may administer oaths and affirmations,
24 subpoena witnesses, take evidence and require by subpoena duces tecum or by
25 citation the production of books, papers, contracts, agreements or other
26 documents, records or information, whether filed or kept in original form or
27 electronically stored or recorded, that the commission deems relevant or
28 material to the inquiry.

29 B. The commission may issue and apply to enforce a subpoena in this
30 state at the request of a securities agency or administrator of another state
31 if the activities constituting an alleged violation for which the information
32 is sought would be a violation of this chapter if the activities had occurred
33 in this state.

34 C. IN CONNECTION WITH THE POWER TO ENFORCE THE PRODUCTION OF EVIDENCE
35 BY SUBPOENA VESTED IN THE COMMISSION BY ARTICLE 15 OF THE CONSTITUTION OF
36 ARIZONA AND THE COMMISSION'S POWER TO CONDUCT PRIVATE INVESTIGATIONS PURSUANT
37 TO SECTION 44-1822, THE COMMISSION HAS THE AUTHORITY TO ORDER A FINANCIAL
38 INSTITUTION NOT TO DISCLOSE THE EXISTENCE OR CONTENT OF THE SUBPOENA TO
39 PERSONS NOT AFFILIATED WITH THE FINANCIAL INSTITUTION OTHER THAN TO THE
40 FINANCIAL INSTITUTION'S LEGAL COUNSEL. THE COMMISSION SHALL EXERCISE SUCH
41 POWER IF THE COMMISSION FINDS IT NECESSARY OR APPROPRIATE IN THE PUBLIC
42 INTEREST OR FOR THE PROTECTION OF INVESTORS.

1 Sec. 3. Section 44-3134, Arizona Revised Statutes, is amended to read:

2 44-3134. Contempt; penalty

3 A. If a person refuses to obey a subpoena or citation issued by the
4 commission, any member of the commission, the director or any officer
5 designated by the commission, the superior court in Maricopa county, on
6 application by the commission, shall issue to the person an order requiring
7 that person to appear before the commission, the director or the officer
8 designated by the commission to produce documentary evidence if so ordered
9 and to give evidence concerning the matter under investigation or in
10 question. The court may punish failure to obey the order of the court as
11 contempt.

12 B. IN THE CASE OF WILFUL NONCOMPLIANCE WITH A NONDISCLOSURE ORDER
13 INCLUDED IN A SUBPOENA ISSUED PURSUANT TO SECTION 44-3133, ON APPLICATION BY
14 THE COMMISSION, THE SUPERIOR COURT IN MARICOPA COUNTY MAY EXERCISE ITS
15 CONTEMPT POWERS. FOR THE PURPOSES OF THIS SUBSECTION, "WILFUL" HAS THE SAME
16 MEANING AS THAT PRESCRIBED TO WILFULLY IN SECTION 1-215.

17 ~~B.~~ C. The court shall award reasonable expenses, including attorney
18 fees, to the commission if the refusal to obey a subpoena or citation issued
19 by the commission was not substantially justified, unless other circumstances
20 make an award of expenses unjust.

21 ~~C.~~ D. Process in any proceeding pursuant to this section may be
22 served on the defendant in any county of this state in which the defendant
23 transacts business or is found.

24 ~~D.~~ E. Any expenses, including attorney fees, collected pursuant to
25 this section shall be deposited, pursuant to sections 35-146 and 35-147, in
26 the state general fund.

27 Sec. 4. Section 44-3271, Arizona Revised Statutes, is amended to read:

28 44-3271. Complaint for appointment of conservators and
29 receivers

30 If an act, practice or transaction that constitutes a violation of
31 section 44-3151 or article 9 of this chapter is alleged in a complaint filed
32 by this state or an agency of this state, the commission may PETITION THE
33 SUPERIOR COURT IN MARICOPA COUNTY FOR THE APPOINTMENT OF A CONSERVATOR TO
34 REORGANIZE THE AFFAIRS OF, OR A RECEIVER TO WIND UP THE AFFAIRS OF, THE
35 VIOLATOR. THE COMMISSION MAY transmit any evidence it has available
36 concerning the act, practice or transaction to the attorney general. On
37 receipt of the evidence, the attorney general may petition the superior court
38 in Maricopa county for the appointment of a conservator to reorganize the
39 affairs of, or a receiver to wind up the affairs of, the violator. Process
40 in these actions may be served on the defendant in any county in this state
41 in which the defendant transacts business or is found.

1 Sec. 5. Section 44-3297, Arizona Revised Statutes, is amended to read:
2 44-3297. Costs recoverable
3 In an action brought under this article, the COMMISSION OR THE attorney
4 general is entitled to recover costs that in the discretion of the court may
5 include an amount representing reasonable attorney fees and investigative
6 expenses for services rendered.

APPROVED BY THE GOVERNOR APRIL 7, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2003.

Passed the House February 17, 2003,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Spencer L. Moore
Chief Clerk of the House

Passed the Senate April 1, 2003,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Chaimin Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2 day of April, 2003

at 12:40 o'clock P M.

Janet Hernandez
Secretary to the Governor

Approved this 7 day of

April, 2003,

at 2⁰⁰ o'clock P M.

J. A. Nagle
Governor of Arizona

H.B. 2158

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2003,

at 4:27 o'clock P M.

Janice K. Brewer
Secretary of State